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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,637	07/11/2003	Noriyuki Ito	5271-0108PUS1	4271
2292 7590 05/14/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER MAPLES, JOHN S				
ART UNIT		PAPER NUMBER		
1795				
NOTIFICATION DATE		DELIVERY MODE		
05/14/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/617,637

Applicant(s)

ITO ET AL.

Examiner

John S. Maples

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-18, 20-29 and 35-44 is/are pending in the application.
- 4a) Of the above claim(s) 16-18, 20, 21, 25-29 and 35-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date 14 May 2007
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. Claims 16-18, 20, 21, 25-29, 35-44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 28 February 2008.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slezak-US 2005/0170246 (Slezak) in view of both Eveready-WO 01/86740 (Eveready) and Dowa-JP-2001-283842. (Dowa) (New Rejection)

Reference is made to paragraphs 83-93 in Slezak along with Example 1 for an alkaline battery including a positive mixture comprising manganese dioxide including potassium hydroxide and where water is present in an amount of about 8%. Slezak's

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teaching of the amount of water is within the claimed range of 8.4% because of the use of the work "about". It is noted that the negative active material in Slezak can be a zinc alloy including bismuth, indium and aluminum-see paragraph 92 therein. The only claimed features not taught by Slezak are the specific amounts of bismuth, indium and aluminum and for the ratio of zinc alloy powder that passes through a 200-mesh sieve (noting that this translates to passing particle sizes of around 125 microns or less).

Eveready discloses in the Abstract and on pages 3 and 8, a zinc alloy anode for an alkaline battery wherein the average particle size is 150 microns or smaller. With this particle size, it is inherent or it would have been obvious to have provided 60-96 wt. percent greater than around 130 microns in particle size for the zinc alloy. To have provided this particle size of Eveready in the anode of Slezak would have been obvious to one of ordinary skill in this art at the time the invention was made because the same is not more than a substitution of one zinc alloy in the alkaline battery art for another zinc alloy-see *KSR*, 82 USPQ2d 1396.

Dowa teaches in the table on page 5 therein amounts of bismuth, indium and aluminum as in applicant's claims in a zinc alloy anode for an alkaline battery. To have included these amounts of Dowa in the alkaline battery of Slezak would have been obvious because the same is not more than a substitution of the amounts of bismuth, indium and aluminum of one alkaline battery in another alkaline battery-see *KSR* 82 USPQ2d 1396.

Applicant's arguments have been considered but are deemed moot in view of the above new grounds of rejection.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John S. Maples whose telephone number is 571-272-1287. The examiner can normally be reached on Monday-Friday, 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John S. Maples/

John S. Maples
Primary Examiner
Art Unit 1795

Application Number**Application/Control No.**

10/617,637

Examiner

John S. Maples

**Applicant(s)/Patent under
Reexamination**

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